

**REMARKS**

Applicants respectfully submit the arguments herein traverse the outstanding rejections and objection and respectfully ask the Examiner to reconsider and withdraw them. Claims 1-2, 5, 7-13 and 16-20 currently stand rejected under 35 U.S.C. § 102(b). Claim 6 currently stands rejected under 35 U.S.C. § 103(a). Claims 3-4 and 14-15 are currently objected to, but are indicated as having allowable subject matter.

**Objections to Claims 3-4 and 14-15**

The current action states that claims 3-4 and 14-15 contain allowable subject matter and would be allowable if rewritten to overcome the 35 U.S.C. § 112, 2nd paragraph rejections set forth in the current office action. Applicants thank the Examiner for the allowance of the subject matter of claims 3-4 and 14-15, but respectfully point out the current action does not set forth any § 112 rejections for these claims. The previous office action dated September 27, 2004, did reject claims 1-20 under 35 U.S.C. § 112, second paragraph; but the applicants' response dated June 25, 2004 fully responded to those rejections. This current action has withdrawn all of the previous action's rejections in light of the new 35 U.S.C. § 102(b) rejections, thus, there are no 35 U.S.C. § 112 rejections of record for claims 3-4 and 14-15. In the previous office action, the Examiner took issue with claims 1 and 12 from which the abovementioned claims depend. Applicants respectfully submit claims 1, 3, 12, and 14 were amended and submitted to the Examiner on June 25, 2004. Applicants believe these amendments further clarify the claims at issue and that the § 112 rejection to them should be withdrawn. Accordingly, Applicants respectfully request the Examiner withdraw the objection to claims 3-4 and 14-15 or further clarify his objection to those claims.

**Rejection under 35 U.S.C. § 102(b)**

The current action rejects claims 1-2, 5, 7-13, and 16-20 under 35 U.S.C. § 102(b) as anticipated by Steere et al (hereinafter Steere) ("A Feedback-driven Proportion Allocator for Real-Rate Scheduling")

However, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference,"

M.P.E.P. § 2131, and the Applicants respectfully assert that the rejections of record do not meet this requirement.

#### Claim 1

Independent claim 1 comprises “a calculator that determines an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from at least one user-defined goal . . . .” While the Steere reference does describe the calculation of both a derivative and an integral, it makes no reference to the use of any user defined parameter when making that calculation. In fact, the reference reveals the derivative is “described by the summed progress pressures over time,” and not by any user defined parameter. Steere, Pg. 6 Col. 2.

Additionally, there is no mention in Steere of the use of any user defined information. In fact, the proportion and period values indicated by Examiner as being similar factors to those claimed are dynamically estimated based on observations of a job’s progress; “alleviating the need for input from human experts” such that the “proportions and periods assigned to threads change dynamically and automatically as resource requirements change.” Steere, Pg. 1, Col. 2.

Because the cited prior art does not teach the use of at least one user-defined goal as required by claim 1, it does not contain each and every element of the claim. Therefore, Applicants respectfully assert that claim 1 is patentable over the § 102 rejection of record. Accordingly Applicants respectfully request the Examiner withdraw the § 102 rejection of claim 1.

#### Claim 2

Claim 2 further describes the proportional factor, the integral factor, and the derivative factor. The proportional factor “includes a proportional constant and a proportional variable.” The integral factor “includes an integral constant and a[n] integral variable.” The derivative factor “includes a derivative constant and a derivative variable.” The claim requires that each of these constants “is a user-selectable input” and it also requires that each of the variables “is determined from the at least one user-defined goal . . . .”

While the reference cited by the Examiner does mention a proportional constant, there is no mention in the reference of a proportional variable. Additionally, the constant taught by the reference is not a user selectable input as required by claim 2. There is also no mention or indication of the use of a proportional variable, an integral constant or variable, or a derivative constant or variable in the cited reference.

Lastly, although claim 2 contains subject matter that allows it to stand on its own, it also depends from independent claim 1, and thus inherits each and every limitation of claim 1. Applicants respectfully assert claim 1 is patentable over the § 102 rejection of record; and therefore, so is dependent claim 2.

Because the cited prior art does not teach each and every element of claim 2, and because claim 2 depends from a claim that Applicants assert are patentable over the § 102 rejection, Applicants respectfully assert that claim 2 is also patentable over the § 102 rejection of record. Accordingly, Applicants respectfully request the Examiner withdraw the § 102 rejection of claim 2.

#### Claims 5 and 7-11

Although Claims 5 and 7-11 contain subject matter that allows them to stand on their own, they also each depend directly or indirectly from independent claim 1, and thus inherit each and every limitation of that claim. Applicants respectfully assert claim 1 is patentable over the § 102 rejection of record; and therefore, so are the dependent claims 5 and 7-11. Accordingly, Applicants respectfully request the Examiner withdraw the § 102 rejection of claims 5, 7-11, 16-17, and 19-20.

#### Claim 12

Independent claim 12 comprises “code for determining an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from at least one user-defined goal . . . .” While the Steere reference does describe the calculation of both a derivative and an integral, it makes no reference to the use of any user defined parameter when making that calculation. In fact, the reference reveals the

derivative is “described by the summed progress pressures over time,” and not by any user defined parameter. Steere, Pg. 6 Col. 2.

Additionally, there is no mention in Steere of the use of any user defined information. In fact, the proportion and period values indicated by Examiner as being similar factors to those claimed are dynamically estimated based on observations of a job’s progress; “alleviating the need for input from human experts” such that the “proportions and periods assigned to threads change dynamically and automatically as resource requirements change.” Steere, Pg. 1, Col. 2.

Because the cited prior art does not teach the use of at least one user-defined goal as required by claim 12, it does not contain each and every element of the claim. Therefore, Applicants respectfully assert that claim 12 is patentable over the § 102 rejection of record. Accordingly Applicants respectfully request the Examiner withdraw the § 102 rejection of claim 12.

### Claim 13

Claim 13 further describes the proportional factor, the integral factor, and the derivative factor. The proportional factor “includes a proportional constant and a proportional variable.” The integral factor “includes an integral constant and a[n] integral variable.” The derivative factor “includes a derivative constant and a derivative variable.” The claim requires that each of these constants “is a user-selectable input” and it also requires that each of the variables “is determined from the at least one user-defined goal . . . .”

While the reference cited by the Examiner does mention a proportional constant, there is no mention in the reference of a proportional variable. Additionally, the constant taught by the reference is not a user selectable input as required by claim 13. Additionally, there is no mention or indication of the use of a proportional variable, an integral constant or variable, or a derivative constant or variable in the cited reference.

Lastly, although claim 13 contains subject matter that allows it to stand on its own, it also depends from independent claim 12, and thus inherits each and every limitation of claim

12. Applicants respectfully assert claim 12 is patentable over the § 102 rejection of record; and therefore, so is dependent claim 13.

Because the cited prior art does not teach each and every element of claim 13, and because claim 13 depends from a claim that Applicants assert are patentable over the § 102 rejection, Applicants respectfully assert that claim 13 is also patentable over the § 102 rejection of record. Accordingly, Applicants respectfully request the Examiner withdraw the § 102 rejection of claim 13.

#### Claims 16-17

Although Claims 16-17 contain subject matter that allows them to stand on their own, they also each depend directly or indirectly from independent claim 12, and thus inherit each and every limitation of that claim. Applicants respectfully assert claim 12 is patentable over the § 102 rejection of record; and therefore, so are the dependent claims 16-17. Accordingly, Applicants respectfully request the Examiner withdraw the § 102 rejection of claims 16-17.

#### Claim 18

Independent claim 18 comprises steps of “determining an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from at least one user-defined goal . . . .” While the Steere reference does describe the calculation of both a derivative and an integral, it makes no reference to the use of any user defined parameter when making that calculation. In fact, the reference reveals the derivative is “described by the summed progress pressures over time,” and not by any user defined parameter. Steere, Pg. 6 Col. 2.

Additionally, there is no mention in Steere of the use of any user defined information. In fact, the proportion and period values indicated by Examiner as being similar factors to those claimed are dynamically estimated based on observations of a job’s progress; “alleviating the need for input from human experts” such that the “proportions and periods assigned to threads change dynamically and automatically as resource requirements change.” Steere, Pg. 1, Col. 2.

Because the cited prior art does not teach the use of at least one user-defined goal as required by claim 18, it does not contain each and every element of the claim. Therefore, Applicants respectfully assert that claim 18 is patentable over the § 102 rejection of record. Accordingly Applicants respectfully request the Examiner withdraw the § 102 rejection of claim 18.

#### Claims 19-20

Although Claims 19-20 contain subject matter that allows them to stand on their own, they also each depend directly or indirectly from independent claim 18, and thus inherit each and every limitation of that claim. Applicants respectfully assert claim 18 is patentable over the § 102 rejection of record; and therefore, so are the dependent claims 19-20. Accordingly, Applicants respectfully request the Examiner withdraw the § 102 rejection of claims 19-20.

#### Rejection under 35 U.S.C. § 103(a)

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Steere. Although Claim 6 contains subject matter that allows it to stand on its own, Claim 6 depends directly from independent claim 1, and thus inherits each and every limitation of claim 1. Applicants respectfully assert claim 1 is patentable over the § 102 rejection of record; and therefore, so is dependent claim 6. Accordingly, Applicants respectfully request the Examiner withdraw the § 103(a) rejection of claim 6.

#### Conclusion

In view of the above response, Applicants believe the pending application is in condition for allowance.

Application No.: 09/493,753

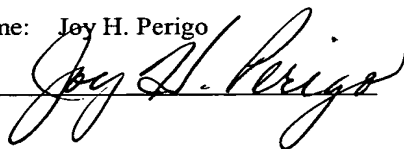
Docket No.: 10992091-1

Applicant believes no fee is due with this Amendment. However, if any additional fee is due, or at any time during the pendency of this application, please charge any additional fees required or credit any overpayment to Deposit Account No. 08-2025, under Order No. 10992091-1 from which the undersigned is authorized to draw.

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Label No. EV482708681 in an envelope addressed to: MS Amendment, Commissioner for Patents, Alexandria, VA 22313.

Date of Deposit: 07-19-2005

Typed Name: Joy H. Perigo

Signature: 

Respectfully submitted,

By: 

Michael A. Papalas  
Attorney/Agent for Applicant(s)  
Reg. No. 40,381  
Date: July 19, 2005  
Telephone No. (214) 855-8186